

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b),)
FM Table of Allotments,) MM Docket No. 99-57
FM Broadcast Stations.) RM-9460
(Upton and Pine Haven, Wyoming)¹) RM-9610

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 13, 2000;

Released: September 22, 2000

By the Chief, Allocations Branch:

1. The Allocations Branch has before it a *Notice of Proposed Rule Making*, 14 FCC Rcd 2877 (1999), issued at the request of Windy Valley Broadcasting ("petitioner") proposing the allotment of Channel 290C1 at Upton, Wyoming, as the community's first local aural transmission service (RM-9460). Comments and a counterproposal were filed by Mount Rushmore Broadcasting, Inc. ("Mount Rushmore"), proposing the allotment of Channel 290A at Upton, Wyoming and Channel 288A at Pine Haven, Wyoming (RM-9610).² Comments were also filed by Carol and Keith Rasmussen, licensees of AM Station KASL, Newcastle, Wyoming.

2. In support of its counterproposal proposal, Mount Rushmore states that the allotment of Channel 290A at Upton, Wyoming and Channel 288A at Pine Haven, Wyoming, would provide each community the its first local aural transmission service. It further states that its proposal is the preferred allocation because it would provide a first local service to two communities, whereas petitioner's proposed allotment of Channel 290C1 at Upton, Wyoming, would provide a first local service to only one community. Moreover, Mount Rushmore states that its proposal is consistent with priority (3) of the FM allotment priorities set forth in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).³ While both proposals fulfill FM allotment priority (3), Mount Rushmore asserts that its proposal's combined populations of Upton and Pine Haven (1,121) is greater than the population of Upton alone (980), and thus, its proposal would result in a more efficient use of the channels. Mount Rushmore affirms that it will apply for the respective channels, if allotted.

¹ The community of Pine Haven has been added to the caption.

² The counterproposal was placed on Public Notice on May 6, 1999, Report No. 2328 (RM-9610).

In its counterproposal, Mount Rushmore also includes a proposal to institute a proceeding to reevaluate the Commission's FM allotment priorities, claiming that the current allotment scheme discriminates against minorities. Such a proposal cannot be considered in the context of an adjudicatory proceeding such as this. Any such proposal should be filed as a separate petition for rule making.

³ The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service, and (4) other public interest matters. [Co-equal weight is given to priorities (2) and (3).]

3. Conflicting proposals are considered on a comparative basis with the allotment priorities set forth in the Revision of FM Assignment Policies and Procedures, *supra*, serving as a guide. However, since a staff search has revealed that there are alternate Class A channels available for both Upton and Pine Haven, Wyoming, a comparative analysis is no longer necessary. Therefore, we find that the public interest would be served by allotting Channels 283A and 290C1 at Upton, Wyoming, and Channel 259A at Pine Haven, Wyoming.

Technical Summary

4. An engineering analysis has determined that Channels 283A and 290C1 can be allotted to Upton in compliance with the Commission's minimum distance separation requirements at city reference coordinates.⁴ Additionally, Channel 259A can be allotted to Pine Haven in compliance with the Commission's minimum distance separation requirements at city reference coordinates.⁵

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 6, 2000**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, as follows:

<u>Community</u>	<u>Channel No.</u>
Upton, Wyoming	283A, 290C1
Pine Haven, Wyoming	259A

6. Filing windows for Channels 283A and 290C1 at Upton, Wyoming, and Channel 259A at Pine Haven, Wyoming, will not be opened at this time. Instead, the issue of opening filing windows for these channels will be addressed by the Commission in a subsequent order.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

⁴ The coordinates for Channel 283A and 290C1 at Upton are 44-05-54 North Latitude and 104-37-36 West Longitude.

⁵ The coordinates for Channel 259A at Pine Haven are 44-21-28 North Latitude and 104-48-36 West Longitude.

8. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau (202) 418-2180. Questions related to the application filing process should be addressed to the Audio Services Division, Mass Media Bureau (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau